

DLD-127

February 16, 2007

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. **06-4259**

CHARLES F. CARDONE

v.

OFFICE OF ATTORNEY GENERAL OF DELAWARE, ET AL.

(D. DEL. CIV. NO. 06-CV-00127)

Present: BARRY, AMBRO and FISHER, Circuit Judges

Submitted are:

- (1) Appellant's application for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and
- (2) Appellant's submission received on December 8, 2006, which the Court may wish to construe as a motion for an evidentiary hearing, etc.
in the above-captioned case.

Respectfully,

Clerk

MMW/LLB/clc

ORDER

The foregoing request for a certificate of appealability is denied for the reasons given by the District Court. Appellant filed his federal habeas petition before exhausting available state remedies. 28 U.S.C. § 2254(b)(1)(A). A stay of proceedings was not warranted because the habeas statute of limitations has yet to expire and because there exists no good cause for appellant's failure to bring his ineffective assistance of counsel claims in a state post-conviction petition. Rhines v. Weber, 544 U.S. 269, 277 (2005). Appellant's submission received on December 8, 2006, which the Court has construed as a motion for an evidentiary hearing and other relief, is denied as moot.

By the Court,

/s/ Thomas L. Ambro
Circuit Judge

Dated: March 6, 2007

CLC\cc: Mr. Charles F. Cardone

Elizabeth R. McFarlan, Esq.



Marcia M. Waldron
Marcia M. Waldron, Clerk